

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
Ronald L. Motley (1944-2013) Jodi Westbrook Flowers / Donald A. Migliori, <i>Co-Chairs</i> MOTLEY RICE LLC James P. Kreindler, <i>Co-Chair</i> KREINDLER & KREINDLER LLP	Stephen A. Cozen, <i>Co-Chair</i> Sean Carter, <i>Co-Chair</i> COZEN O'CONNOR
Andrew J. Maloney III, <i>Co-Liaison Counsel</i> KREINDLER & KREINDLER LLP Robert T. Haelele, <i>Co-Liaison Counsel</i> MOTLEY RICE LLC	J. Scott Tarbutton, <i>Liaison Counsel</i> COZEN O'CONNOR

VIA ECF

May 16, 2019

The Honorable Sarah Netburn, U.S. Magistrate Judge
United States District Court for the S.D.N.Y.
Thurgood Marshall U.S. Courthouse, Room 430
40 Foley Square
New York, NY 10007

Re: *In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Netburn:

On behalf of the Plaintiffs' Executive Committees, and pursuant to Your Honor's order at ECF No. 4464, we write to supplement the PECs' previous report (at page 4 of the April 23, 2019 status report, ECF No. 4495) regarding defendant Wa'el Jelaidan. Based on information exchanged to date with Mr. Jelaidan's counsel, Martin McMahon, the status of discovery as to Mr. Jelaidan remains unchanged from our earlier report.

Mr. McMahon has advised the PECs that, notwithstanding the Court's imposition of protocols establishing four Presumptively Acceptable Locations (New York, London, Madrid, and Rome) (ECF No. 3894 at ¶ 31), and despite the Court's schedule to complete merits defendants' depositions, Mr. Jelaidan has declined to be deposed until, at the earliest, December 2019 or January 2020 and will not agree to be deposed outside of Saudi Arabia. Mr. McMahon is, of course, aware of this Court's decision denying other defendants' motions for a protective order and requiring them to appear for their depositions in London (ECF No. 4105). However, in this case, he has not sought an order of protection. Nor has he offered any rationale for declining to proceed as directed by the Court. In short, he has simply declined to engage in any dialogue to justify his position.

In light of the plaintiffs' allegations of Mr. Jelaidan's involvement with not only Osama Binladin, but also other organizations intimately intertwined with the al Qaeda network and other defendants in discovery (including, among others, Mr. Kadi, Muslim World League, and IIRO), the PECs do intend to take Mr. Jelaidan's deposition. However, his insistence that the deposition be conducted at a place and time of his unilateral determination, despite the Court's orders to the contrary, is not acceptable to the PECs. Accordingly, the PECs ask for the Court's aid in directing

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Mr. Jelaidan to appear for his deposition at a date and time that complies with the deposition protocol and consistent with the Court's deadlines.

Finally, in the Court's order at ECF No. 4464, the Court has asked the PECs to clarify whether the PECs intend to renew their motion for dispositive sanctions when the case proceeds to summary judgment. Particularly in light of the witness's continued unwillingness to comply with the Court's orders to engage in discovery, we do. While plaintiffs are entitled to conduct a deposition of Mr. Jelaidan, we would emphasize our view that the conduct of his deposition would not compensate for Mr. Jelaidan's longstanding, profound failures to meet his obligations in this MDL or excuse him for the consequences of those failures.

Respectfully submitted,

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For the Plaintiffs' Exec. Committees

cc: The Honorable George B. Daniels, via ECF
All Counsel of Record via ECF